

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RONALD JAY BIANCHI,

Petitioner,

v.

JERI BOE,

Respondent.

CASE NO. C22-5957JLR-SKV

ORDER

**I. INTRODUCTION**

This matter comes before the court on the report and recommendation of United States Magistrate Judge Kate S. Vaughan (R&R (Dkt. # 12)), and *pro se* Petitioner Ronald Jay Bianchi's objections thereto (Obj. (Dkt. # 13)). Magistrate Judge Vaughan recommends denying Mr. Bianchi's 28 U.S.C. § 2254 habeas petition. (R&R at 1, 3; *see also* Pet. (Dkt. # 4).) Having carefully reviewed all of the foregoing, along with all other relevant documents, and the governing law, the court ADOPTS the report and

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1 recommendation, OVERRULES Mr. Bianchi's objections, and DENIES Mr. Bianchi's  
2 § 2254 petition.

## 3 II. BACKGROUND<sup>1</sup>

4 Mr. Bianchi is a Washington State prisoner who is currently confined at the  
5 Clallam Bay Corrections Center in Clallam Bay, Washington. (*See* Pet. at 1.) He is  
6 currently serving a 1,131-month sentence for his 2019 convictions for two counts of  
7 robbery in the first degree, two counts of possession of stolen property in the second  
8 degree, one count of malicious explosion, one count of assault in the second degree, and  
9 three counts of attempted murder in the first degree. (*See* State Records (Dkt. # 8), Ex. 1;  
10 *see also* R&R at 2-6 (detailing the factual and procedural background to Mr. Bianchi's  
11 convictions).)

12 Mr. Bianchi now seeks federal habeas review of his 2019 convictions. (*See*  
13 *generally* Pet.) He identifies the following four grounds for relief in his petition: (1) the  
14 State's 2017 amendment of the charges against him, replacing the 1997 attempted felony  
15 murder charges with attempted murder charges, was not permissible because the statute  
16 of limitations had expired and the new charges were substantially broader than the  
17 original, timely charges (*id.* at 5, 16-31); (2) "Mr. Bianchi was denied his constitutional  
18 right to present a defense" when the trial court prohibited him from introducing allegedly  
19 admissible and critical testimony from his accomplice's girlfriend (*id.* at 7, 31-37  
20 (explaining that the girlfriend would have testified to a statement made by his

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21  
22 <sup>1</sup> The court ADOPTS Magistrate Judge Vaughan's detailed discussion of the factual and  
procedural background of this case and does not repeat that background here. (*See* R&R at 2-6.)

1 accomplice, Mr. Brock)); (3) “[p]rosecutorial [m]isconduct [d]eprived Mr. Bianchi of a  
2 fair trial” (*id.* at 8, 37-46 (basing this claim on the prosecutor’s alleged misstatement of  
3 law, misrepresentation of the defense’s argument, and statement regarding holding Mr.  
4 Bianchi accountable)); and (4) trial counsel at Mr. Bianchi’s second trial rendered  
5 ineffective assistance when she objected to inadmissible, prejudicial evidence on the  
6 wrong grounds (*id.* at 10, 46-49).

7         Magistrate Judge Vaughan recommends that the court deny Mr. Bianchi’s § 2254  
8 habeas petition with prejudice and deny a certificate of appealability because Mr. Bianchi  
9 is not entitled to federal habeas relief with respect to any of his asserted claims. (*See*  
10 R&R at 9-32.) First, Magistrate Judge Vaughan concluded that Mr. Bianchi’s claim  
11 regarding the state court’s resolution of the statute of limitations issue is not cognizable  
12 under 28 U.S.C. § 2254(d) because the claim does not implicate his federal constitutional  
13 rights and even if it could be construed as such, the state court’s determination of state  
14 law is binding on this court. (R&R at 9-11.) Second, Magistrate Judge Vaughan  
15 concluded that Mr. Bianchi’s claim regarding the exclusion of a witness’s testimony  
16 failed because (1) Mr. Bianchi could not “show that the Washington Court of Appeals’  
17 decision upholding the exclusion of Mr. Brock’s hearsay statement is contrary to, or  
18 involved an unreasonable application of, clearly established Supreme Court precedent”  
19 and (2) even if he could make such a showing, habeas relief is unwarranted given that  
20 Mr. Bianchi has not shown that “the omission of Mr. Brock’s statement from his second  
21 trial had a ‘substantial and injurious effect on the verdict.’” (*Id.* at 11-19 (quoting  
22 *Lunbery v. Hornbeak*, 605 F.3d 754, 762 (9th Cir. 2010)).)

1 Third, Magistrate Judge Vaughan concluded that each portion of Mr. Bianchi's  
2 prosecutorial misconduct claim failed because the Washington Court of Appeals  
3 reasonably determined that Mr. Bianchi did not show that the prosecutor's conduct was  
4 improper or prejudicial. (*Id.* at 19-23 (noting that although the Court of Appeals did find  
5 misconduct as to the misstatement of law portion of Mr. Bianchi's prosecutorial  
6 misconduct claim, it found no prejudice).) Finally, Magistrate Judge Vaughan rejected  
7 Mr. Bianchi's ineffective assistance of counsel claim because Mr. Bianchi failed "to  
8 demonstrate that the Washington Court of Appeals' application of the *Strickland* [*v.*  
9 *Washington*, 466 U.S. 668 (1984)] standard was unreasonable." (*Id.* at 28-31.)

10 Mr. Bianchi timely objected to the report and recommendation. (*See* Obj.)

### 11 III. ANALYSIS

12 A district court has jurisdiction to review a Magistrate Judge's report and  
13 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court  
14 may accept, reject, or modify, in whole or in part, the findings or recommendations made  
15 by the magistrate judge." 28 U.S.C. § 636(b)(1). "The statute makes it clear that the  
16 district judge must review the magistrate judge's findings and recommendations de novo  
17 if objection is made, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,  
18 1121 (9th Cir. 2003) (en banc). Because Mr. Bianchi is proceeding *pro se*, this court  
19 must interpret his petition and objections liberally. *See Bernhardt v. Los Angeles Cnty.*,  
20 339 F.3d 920, 925 (9th Cir. 2003).

21 Mr. Bianchi challenges Magistrate Judge Vaughan's analysis of each of his  
22 asserted claims for relief, as well as her recommendation that the court deny a certificate

1 of appealability. (*See generally* Obj.) The court has considered Magistrate Judge  
2 Vaughan's recommendations de novo in light of Mr. Bianchi's objections. Mr. Bianchi's  
3 objections do not raise any novel issues that were not addressed by Magistrate Judge  
4 Vaughan's report and recommendation. Moreover, the court has thoroughly examined  
5 the record before it and finds Magistrate Judge Vaughan's reasoning persuasive in light  
6 of that record. The court independently finds that Mr. Bianchi is not entitled to federal  
7 habeas relief or a certificate of appealability with respect to any of his asserted claims for  
8 the same reasons set forth by Magistrate Judge Vaughan. Therefore, the court ADOPTS  
9 the report and recommendation in full.

#### 10 IV. CONCLUSION

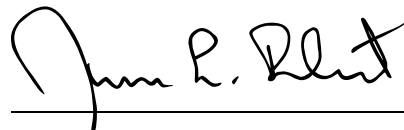
11 For the foregoing reasons, the court hereby ORDERS as follows:

12 (1) The court OVERRULES Mr. Bianchi's objections (Dkt. # 13) and ADOPTS  
13 the report and recommendation (Dkt. # 12) in its entirety;

14 (2) The court DENIES Mr. Bianchi's § 2254 petition (Dkt. # 4), DENIES a  
15 certificate of appealability, and DISMISSES this action with prejudice; and

16 (3) The court DIRECTS the Clerk to send copies of this order to Mr. Bianchi, to  
17 counsel for Respondent Jeri Boe, and to Magistrate Judge Vaughan.

18 Dated this 6th day of July, 2023.

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21 JAMES L. ROBART  
22 United States District Judge